

DETAILED ACTION

Status of Application

Claims 1 and 12-17 are cancelled

Claims have not been amended.

Claims 2-11 are rejected.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 02/27/2008 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

Withdrawal of Objection to the Specification

Applicant has amended the title and it is now considered fully descriptive.
Objection to the title has been withdrawn.

Claim Rejections - 35 USC § 103

Claims 3-7, 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lidstrom et al. (J. Chem. Soc., Perkin Trans. 1, 1997) in view of Alberto et al. (J. Am. Chem Soc., 2001).

Claims 2 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lidstrom et al. (J. Chem. Soc., Perkin Trans. 1, 1997) in view of Alberto et al. (J. Am. Chem Soc., 2001) and further in view of Carter et al. (J. Am. Chem Soc., 1965).

Claims 2-11 are rejected on the same grounds as stated in the Office Action of November 29, 2007.

Response to Applicant's Arguments

Applicant's arguments filed on 02/27/2008 have been fully considered but they are not persuasive.

First, Applicant argues the 35 U.S.C. 103(a) rejection. Applicant asserts that the Alberto reference does not disclose the use of radiolabelled H_3BCO as a donor of radiolabelled carbon monoxide. Alberto teaches preparation of a boron-based carbonylating agent (H_3BCO) which acts as a CO source and reducing agent at the same time [See Page 3135, Column 1, Paragraph 2]. In addition [^{11}C] carbon monoxide was one of the first tracers to be used in human studies [See Lidstrom reference, Page 2701, Column 1, Paragraph 2]. Therefore the references disclose both H_3BCO as a donor of carbon monoxide and radiolabeled carbon monoxide and the processes are therefore shown to be known in the art.

Second, Applicant argues that the statement of motivation for combining the Lidstrom and Alberto references is not obvious and uses hindsight reasoning. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Motivation to combine the radiolabeled CO of Lidstrom in the process taught in Alberto comes from the Alberto reference. Alberto notes the potential for radiolabeled for pharmaceutical applications and the need to find a solid, air-stable source of carbon monoxide [See Page 3135, Column 1, Paragraph 1].

Third, Applicant argues that no reference is cited to show tri-methylamine is a functional equivalent to triethylamine. The Carter reference teaches stability in relation to the base used. The bases include methylamine and dimethylamine [See Page 2355, Column 1, Paragraph 3]. Because the Carter reference has the same functional groups and is shown to stabilize H_3BCO it would have been obvious, at the time Applicant's invention was made, to utilize a compound with the same functional group and similar properties and doing so does not require undo experimentation.

Conclusion

Claims 2-11 are rejected.

No claims are allowed.

THIS ACTION IS MADE FINAL. is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER A. SMITH whose telephone number is (571)270-3599. The examiner can normally be reached on Monday - Friday, 8:30am to 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571)272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1793

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/Roy King/
Supervisory Patent Examiner, Art
Unit 1793

Jennifer A. Smith
April 8, 2008
Art Unit 1793

JS